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Procter & Gamble – I.P. Division

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FACSIMILE TRANSMITTAL SHEET AND
CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8TO: Examiner Robin Annette Hylton - Group Art Unit 3727 - U.S.P.T.O

Fax No. 703-872-9306

Phone No. 571-272-4540

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Listed below are the item(s) being submitted with this Certificate of Transmission:

Number of Pages Including this Page: 11

- 1) Appeal Brief (9 pgs)
- 2) Fee Transmittal (1 pg)
- 3)
- 4)
- 5)

Inventor(s): Cerone et al.

S.N.: 09/996,663

Filed: November 29, 2001

Docket No.: 8794

Comments:RECEIVED
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OIPF/JCWS

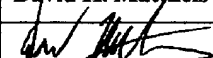
PTO/SB/17 (12-04)

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL for FY 2005 Patent fees are subject to annual revision. Effective December 8, 2004	Complete if Known	
	Application Number	09/996,663
	Confirmation Number	4856
	Filing Date	November 29, 2001
	First Named Inventor	Daniel Raymond Cerone et al.
	Examiner Name	Robin Annette Hylton
	Art Unit	3727
TOTAL AMOUNT OF PAYMENT (\$500)	Attorney Docket No.	8794

METHOD OF PAYMENT		FEE CALCULATION (continued)																																														
1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company		5. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee</th> <th>Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1st month</td> <td>(\$120)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2nd month</td> <td>(\$450)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3rd month</td> <td>(\$1,020)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4th month</td> <td>(\$1,590)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5th month</td> <td>(\$2,160)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(e) Late Oath/Declaration (nonprovisional)</td> <td>(\$130)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (q) Missing Parts (provisional)</td> <td>(\$50)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500)</td> <td>[500]</td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370)</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td></td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		Fee Description	Fee	Paid	Extension for reply within 1 st month	(\$120)	<input type="checkbox"/>	Extension for reply within 2 nd month	(\$450)	<input type="checkbox"/>	Extension for reply within 3 rd month	(\$1,020)	<input type="checkbox"/>	Extension for reply within 4 th month	(\$1,590)	<input type="checkbox"/>	Extension for reply within 5 th month	(\$2,160)	<input type="checkbox"/>	Information Disclosure Statement fee	(\$180)	<input type="checkbox"/>	37 CFR 1.16(e) Late Oath/Declaration (nonprovisional)	(\$130)	<input type="checkbox"/>	37 CFR 1.17 (q) Missing Parts (provisional)	(\$50)	<input type="checkbox"/>	Non-English specification	(\$130)	<input type="checkbox"/>	Notice of Appeal	(\$500)	<input type="checkbox"/>	Filing a brief in support of an appeal	(\$500)	[500]	Request for oral hearing	(\$1,000)	<input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370)	<input type="checkbox"/>	Other:		<input type="checkbox"/>
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FEE CALCULATION 2. BASIC FILING FEE - Large Entity <table border="1"> <thead> <tr> <th>Application Type</th> <th>FILING FEE</th> <th>SEARCH FEE</th> <th>EXAMINATION FEE</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Utility</td> <td>(\$300)</td> <td>(\$500)</td> <td>(\$200)</td> <td>(Total = \$1000) <input type="checkbox"/></td> </tr> <tr> <td>Design</td> <td>(\$200)</td> <td>(\$100)</td> <td>(\$130)</td> <td>(Total = \$430) <input type="checkbox"/></td> </tr> <tr> <td>Reissue</td> <td>(\$300)</td> <td>(\$500)</td> <td>(\$600)</td> <td>(Total = \$1400) <input type="checkbox"/></td> </tr> <tr> <td>Provisional filing fee</td> <td></td> <td></td> <td></td> <td>(Total = \$200) <input type="checkbox"/></td> </tr> </tbody> </table>		Application Type	FILING FEE	SEARCH FEE	EXAMINATION FEE	Fee Paid	Utility	(\$300)	(\$500)	(\$200)	(Total = \$1000) <input type="checkbox"/>	Design	(\$200)	(\$100)	(\$130)	(Total = \$430) <input type="checkbox"/>	Reissue	(\$300)	(\$500)	(\$600)	(Total = \$1400) <input type="checkbox"/>	Provisional filing fee				(Total = \$200) <input type="checkbox"/>																						
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3. APPLICATION SIZE FEE: Sheets of Spec and Drawings <input type="checkbox"/> (\$250 for each 50 sheets in excess of 100, except for sequence and program listings) SUBTOTAL (2)+(3) (\$) <input type="checkbox"/>																																																
4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE: <table border="1"> <thead> <tr> <th></th> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below Fee Description Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$) <input type="checkbox"/>			Extra Claims	Fee from Below	Fee Paid	Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/>	=	<input type="checkbox"/>																															
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SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	David K. Mattheis	Registration No.	48,683
Signature		(Attorney/Agent)	
		Telephone	(513) 634-9359
		Date	May 6, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/996,663
Applicant(s) : Daniel Raymond Cerone et al.
Filed : November 29, 2001
Title : Container Including A Slider, A Reclosable Fastener And
A Track Including A Ramp
TC/A.U. : 3727
Examiner : Robin Annette Hylton
Conf. No. : 4856
Docket No. : 8794
Customer No. : 27752

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is Appellants' Brief relating to an appeal from the December 15, 2004 Final Rejection in the above-identified Application. The Notice of Appeal was deposited with a Certificate of Facsimile transmission and addressed to Commissioner for Patents, Alexandria, VA 22313-1450 on March 7, 2005, and was noted as received by the U.S.P.T.O. on March 7, 2005.

I. Real Party in Interest

The real party in interest for the present Application S.N. 09/996,663 is The Procter & Gamble Company of Cincinnati, OH by virtue of the Assignment recorded on August 19, 2002, at Reel No. 013217, Frame 0521.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellants' undersigned legal representative, which will directly affect, or be directly affected by or have a bearing on, the Board's decision in the present appeal.

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III. Status of Claims

In the Notice of Appeal, Appellants appealed the final rejection of all pending Claims 1-20. The complete copy of the appealed Claims is set forth in the Appendix.

Claims 1-20 stand finally rejected under 35 U.S.C. §112, ¶2 as being indefinite and under 35 U.S.C. §102(b) as being anticipated by Hupp, WO 01/51378.

IV. Status of the Amendments

No amendments to the instant claims have been filed by Appellants in response to the Final Office Action dated December 15, 2004. There has been no amendment to the claims filed after receipt of the Advisory Action dated February 16, 2005.

V. Summary of the Claimed Subject Matter

Independent Claim 1 relates to a container 10. The container 10 comprises a container body 12, a cover 30, and; a reclosable fastener 40 having a first end and a second end. The reclosable fastener 40 is disposed between the container body 12 and the cover 30 and adapted to fasten the cover 30 to the container body 12. The reclosable fastener 40 comprises a track 46. The track 46 comprises a fastener portion 58 formed on the reclosable fastener 40 and a ramp 65 extending from the first end of the reclosable fastener 40. The container 10 also comprises a slider 100 movable along the track 46 to open or close the reclosable fastener 40. See Specification page 2, line 22 – page 3, line 2 and figures 1 – 6.

Independent Claim 18 relates to a container. The container 10 comprises a cover 30 extending in a two dimensional plane defining orthogonal X and Y directions, a container body 12, and a reclosable fastener 40. The reclosable fastener 40 is disposed between the cover 30 and the container body 12 and adapted to fasten the cover 30 to the container body 12. The container 10 further comprises a slider 100 slidably attached to the reclosable fastener 40 and movable along the reclosable fastener 40 to open or close the reclosable fastener 40, and a ramp 65 extending from the reclosable fastener 40 at an angle to the XY plane and providing a parking location for the slider 100. See Specification page 3, lines 3 – 10, and figures 1-6.

Independent Claim 19 relates to a rigid elongate reclosable fastener 40 comprising interlocking protruded and recessed portions 42, 44, a slider 100, and a track 46 for the slider 100. The track 46 includes a fastener portion 58 formed on at least one of the interlocking

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portions 42, 44 and a ramp 65 extending from a first end of the interlocking portions 42, 44, wherein the slider 100 is moved along the track 46 to open or close the interlocking portions 42, 44. See Specification page 3, lines 11 – 17 and figures 1 – 6.

VI. Grounds of Rejection to Be Reviewed on Appeal

1. Claims 1-20 stand finally rejected under 35 U.S.C. §112, ¶2 as being indefinite.
2. Claims 1-20 stand finally rejected under 35 U.S.C. §102(b) over Hupp, WO 01/51378.

VII. Argument

As set forth below, the invention defining the appealed claims is properly defined under 35 U.S.C. §112, ¶2 and novel over the cited reference under 35 U.S.C. §102(b). Therefore, all objections to the claims and rejections to the claims under 35 U.S.C. §112, ¶2 and 35 U.S.C. §102(b) should be reversed.

A. Claims 1-20 Are Definite Under 35 U.S.C. §112, ¶2.

The Examiner has finally rejected claims 1 - 20 under 35 USC §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention. Appellant respectfully appeals this rejection.

The Examiner does not assert that any of the claim language is ambiguous or indefinite. The Examiner provides only that there is insufficient structure set forth in the claims to determine a container body or the ramp, how the ramp defines more than one plane, and the ramp's function with respect to the other parts of the container.

In the Final Rejection, the Examiner provides, in the Response to Arguments section, that it is unclear from Appellant's claim language how the reclosable fastener is disposed between the container body and the cover to fasten the cover to the container. Appellant submits that this rejection is an attempt by the Examiner to require that Appellant's claim language be self enabling. The Examiner is not asserting that the claims are not enabled in view of the specification but rather that the claim itself does not sufficiently describe how to make the invention. Such a requirement is beyond the scope of 35 USC §112.

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The Examiner further provides that the claim language does not clearly set forth the difference between a reclosable fastener and a track that comprises a ramp extending from one end of the reclosable fastener and a fastener portion formed on the reclosable fastener. Appellant submits that the claim language is clear and unambiguous. The container comprises a reclosable fastener. A fastener portion is formed upon the reclosable fastener. The container also comprises a track comprising the combination of a ramp extending from one end of the reclosable fastener and the fastener portion formed on the reclosable fastener.

The Examiner also provides that it is not clear from the claim language how the slider moves along the track to open or close the fastener. The Examiner again appears to be improperly requiring that Appellant's claims be self enabling. The Examiner does not assert that the specification as a whole fails to teach how the slider moves along the track to open or close the fastener, but rather that the claim in isolation fails to teach how to make or use the invention. Again, Appellant submits that the specification as a whole, not individual claims, must teach how to make or use the invention.

Appellant respectfully submits that the claims satisfy the requirements of 35 USC §112 second paragraph as written. Independent Claim 1 provides the elements of an embodiment of the invention and describes the structural relationship of those elements clearly and distinctly. Appellant claims:

A container body, a cover, a reclosable fastener having a first end and a second end, disposed between the container body and the cover and adapted to fasten the cover to the container. Appellant further claim a track comprising a fastener portion on the reclosable fastener a ramp extending from the first end of the reclosable fastener, and a slider movable along the track to open or close the reclosable fastener.

Appellant's claim language provides a clear description of the structure of the invention. The ramp is disposed at the first end of the track which is a portion of the reclosable fastener which is adapted to fasten the cover to the body. A ramp by definition defines more than one plane as a ramp connects a first planar surface with a second planar surface. Appellant submits that 35 USC §112 does not require a description of the function of each element with respect to the other elements recited.

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Similarly, each of independent claims 18 and 19 recites the elements of the embodiments set forth in the respective claims and provides a description of the structural relationship between the recited elements.

Appellant submits that the claim terms are clear and unambiguous and that the claims as written satisfy the definiteness requirement of 35 USC §112. Appellant requests that the rejection of claims 1-20 under 35 USC §112 be reversed.

B. Claims 1-20 Are Novel Over Hupp.

The Examiner has finally rejected claims 1-20 under 35 USC §102(b) over *Hupp* (WO 01/51378 hereinafter *Hupp*). Appellant respectfully appeals this rejection. To anticipate a claimed invention a reference must teach or suggest every claimed limitation. The cited reference does not teach or suggest a ramp as part of a track that is in turn part of a reclosable fastener adapted to fasten a cover and a container body.

The Examiner points to reference number 64 as disclosing a ramp in the reference. Reference number 64 is used to identify an auxiliary track that is not operatively juxtaposed with the seal (see *Hupp* page 10 lines 35-36). Nothing in the *Hupp* reference teaches or discloses that the auxiliary tracks 64, or any other portion of the track 62, is not in the plane of the reclosable fastener. Specifically, nothing in the reference teaches or suggests the existence of a ramp extending from an end of the track.

Appellant respectfully requests that Figure 2 of the reference be compared with Figures 3, 4, 5a and 5b of the application. Figure 2 of the reference illustrates the plane of the fastener and shows that the track 62 and auxiliary track 64 lie in the plane of the fastener.. Figures 3 and 4 of the application illustrate the plane of the fastener of one embodiment of the invention as claimed. Figures 5a and 5b illustrate the deviation by the ramp 65 from the plane of the first end of the fastener. Nothing in the reference teaches or suggests anything other than a planar relationship between the track and the auxiliary track. Nothing in the reference teaches or suggests a relationship between the auxiliary track and the track in the nature of a ramp.

With regard to claim 17, the Examiner provides that the reference teaches a portion of the fastener lying in multiple planes thereby defining multiple planes. The Examiner does not point to any particular portion of the reference as providing this teaching. Appellant respectfully points out that claim 17 is directed to a container wherein a reclosable fastener

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fastens the cover of the container to the body of the container around at least a portion of the perimeter of the container and that the fastened portion of the perimeter defines more than one plane. Nothing in the *Hupp* reference teaches or suggests a container having a perimeter defining more than one plane, or a fastener capable of fastening the container body to the cover along such a perimeter. The reference fails to teach or suggest all of the recited claim limitations. The perimeter of the container of the reference lies in a single plane.

Appellant submits that the cited reference does not teach or suggest all of the recited claim limitations and respectfully request that the rejection of claims 1-20 under 35 USC §102(b) in view of *Hupp* (WO 01/51378) be reversed.

VIII. Conclusion

The Examiner has not satisfied the burden of demonstrating that Appellant's claimed invention is inadequately claimed and/or as being anticipated by the cited reference. Specifically, nothing in the cited reference teaches, discloses, or even remotely suggests Appellants' claimed ramp, or multi-pane fastener.

Thus, for the reasons stated above, the Board is respectfully requested to find Claims 1-20 of the instant Application allowable over the reference cited by the Examiner.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

David K. Mattheis

Typed or printed name

Registration No. 48,683

(513) 634-9359

May 6, 2005

Customer No. 27752

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APPENDIX

Appealed Claims: Serial No. 09/996,663

1. (Original) A container comprising
 - (a) a container body;
 - (b) a cover;
 - (c) a reclosable fastener having a first end and a second end, disposed between the container body and the cover and adapted to fasten the cover to the container;
 - (d) a track comprising a fastener portion formed on the reclosable fastener and a ramp extending from the first end of the reclosable fastener; and
 - (e) a slider movable along the track to open or close the reclosable fastener.
2. (Original) The container according to claim 1, wherein the slider is movable in the track in a closing direction from the second end of the reclosable fastener to the first end of the reclosable fastener and is movable in the track in an opening direction from the first end of the reclosable fastener to the second end of the reclosable fastener.
3. (Original) The container according to claim 2, wherein the ramp is adapted for parking the slider after closing the reclosable fastener.
4. (Original) The container according to claim 2, wherein the track further comprises an auxiliary track extending from the second end of the reclosable fastener and adapted for parking the slider after opening the reclosable fastener.
5. (Original) The container according to claim 1, wherein the slider has a leading edge in the opening direction, the leading edge adapted to engage the cover at about the first end of the reclosable fastener to open the container.

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6. (Original) The container according to claim 1, wherein the cover comprises a flexible lip extending from the reclosable fastener.
7. (Original) The container according to claim 6, wherein the slider is adapted to engage the flexible lip at about the first end of the fastener to initiate opening of the reclosable fastener.
8. (Original) The container according to claim 7, wherein the slider engages an underneath side of the flexible lip forcing the cover to separate from the container body.
9. (Original) The container according to claim 6, wherein the ramp and the first end of the reclosable fastener define an angle therebetween, the angle sufficiently steep to allow the slider to engage the flexible lip at about the first end of the fastener to initiate opening of the reclosable fastener.
10. (Original) The container according to claim 9, wherein the angle is an acute angle.
11. (Original) The container according to claim 1, wherein the reclosable fastener comprises interlocking protruded and recessed elements, the protruded element is provided on the container body and the recessed element is provided on the cover.
12. (Original) The container according to claim 1, wherein the ramp has a radius of curvature at about the first end of the fastener.
13. (Original) The container according to claim 1, wherein the ramp extends linearly for a distance to allow the slider to be parked without interfering with the cover.
14. (Original) The container according to claim 1, wherein the reclosable fastener is sealable.

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15. (Original) The container according to claim 1, wherein the reclosable fastener is adapted to fasten the cover around at least a portion of a perimeter of the container.
16. (Original) The container according to claim 15, wherein the portion of the perimeter defines a single plane.
17. (Original) The container according to claim 15, wherein the portion of the perimeter defines more than one plane.
18. (Original) A container comprising:
 - a cover extending in a two dimensional plane defining orthogonal X and Y directions,
 - a container body;
 - a reclosable fastener disposed between the cover and the container body and adapted to fasten the cover to the container;
 - a slider slidably attached to the reclosable fastener and moved along the reclosable fastener to open or close the reclosable fastener; and
 - a ramp extending from the reclosable fastener at an angle to the XY plane and providing a parking location for the slider.
19. (Original) A rigid elongate reclosable fastener comprising interlocking protruded and recessed portions, a slider, and a track for the slider, the track including a fastener portion formed on at least one of the interlocking portions and a ramp extending from a first end of the interlocking portions, wherein the slider is moved along the track to open or close the interlocking portions.
20. (Original) The container according to claim 6, wherein the ramp and the first end of the reclosable fastener define an angle therebetween, the angle sufficiently steep to allow the slider to initiate opening of the reclosable fastener.